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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK ENNIS,

Plaintiff,

vs.

CITY OF DALY CITY; GARY S. MCLANE,
individually and in his official capacity as
Chief of Police of the City of Daly City; Officer
KRANZ, individually and in his official
capacity as police officer of the City of Daly
City; Officer ANDRADE individually and in
his official capacity as police officer of the City
of Daly City; Sergeant O'ROURKE,
individually and in his official capacity as
police officer of the City of Daly City, and
DOES 1 through 30,

Defendants.

No. C 09-05318 MHP

**DECLARATION OF PLAINTIFF'S
COUNSEL IN SUPPORT OF MOTION
FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Date: June 28, 2010
Time: 2:00 P.M.
Crtrm: 15, 18th Floor

I, DAVID J. BEAUVAIS, declare as follows:

1. I am duly licensed to practice in this court and I am the attorney for plaintiff in the above-entitled action. I make this declaration of my own personal knowledge and if called as a witness, I would testify competently to the facts stated herein.

1 2. The proposed amended complaint adds 1-A Agricultural Association, three of its
2 employees, Carson & Barnes Circus and three of its employees as defendants in the action. The
3 proposed amended complaint also adds Daly City police captain Eric Wollman. There are no
4 new claims in the proposed complaint.

5 3. This motion is filed within the time provided in the court's scheduling order as
6 extended by the parties' stipulation approved by the court.

7 4. After the filing of plaintiff's first amendment complaint, he received in the course of
8 discovery information from which he concluded that Carson & Barnes was acting in conjunction
9 with the Daly City Police and 1-A Agricultural Association to formulate and implement the
10 unconstitutional policy which deprived plaintiff of his first and fourth amendment rights. Diana
11 Colvin confirmed in her deposition testimony on April 23 and May 7 that these parties acted in
12 concert to formulate the policy despite warnings from Daly City police officer Griggs that they
13 needed to change the configuration of the barricades to comport with constitutional requirements.
14 He was overruled by Lieutenant Wollman who has since been promoted to Captain. Defendant
15 Parra-Bello, representing Carson & Barnes and Diana Colvin representing 1-A Agricultural
16 Association were also participants.

17 5. It also became clear through Colvin's testimony that Carson & Barnes participated in
18 the enforcement of the policy which resulted in the attack on plaintiff by Kranz and Carson &
19 Barnes employees. The new information thus established a nexus between the policy jointly
20 established and carried out by the two public entities and the private entity acting in concert to
21 violate plaintiff's rights.

22 6. Prior to the taking of Colvin's deposition, plaintiff had no evidence that Carson &
23 Barnes acted in concert with the police or 1-A Agricultural Association or that 1-A Agricultural
24 Association was involved in formulating the policy under which the police acted.

25 7. Plaintiff sought a stipulation from the defendant's counsel for leave to file an amended
26 complaint but was unable to reach her to discuss the contents of the amended complaint.
27 Accordingly, plaintiff is pursuing relief by way of motion.
28

8. Leave to amend at this stage will not prejudice the defendants currently named or those sought to be joined. Discovery is at an early stage and discovery cutoff is in September.

9. A true copy of plaintiff's proposed amended complaint is attached hereto as Exhibit "A."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: May 14, 2010

/s/ David J. Beauvais
Attorney for Plaintiff
Mark Ennis

EXHIBIT A

David J. Beauvais (CA Bar # 84275)
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Attorney for Plaintiff
 MARK ENNIS

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MARK ENNIS,

Plaintiff,

vs.

CITY OF DALY CITY; GARY S. MCLANE,
 individually and in his official capacity as
 Chief of Police of the City of Daly City; Officer
 KRANZ, individually and in his official)
 capacity as police officer of the City of Daly)
 City; Officer ANDRADE individually and in)
 his official capacity as police officer of the City)
 of Daly City; Sergeant O'ROURKE,)
 individually and in his official capacity as)
 police officer of the City of Daly City;)
 SERGEANT KEYES, individually and in his)
 official capacity as police officer of the City of)
 Daly City and DOES 1 through 30,)

Defendants.

No. C 09-05318 MHP

**FIRST AMENDED COMPLAINT FOR
 VIOLATION OF CIVIL RIGHTS**

42 U.S.C. § 1983, Cal. Civil Code §§ 51.7,
 51.2

Jury Trial Demanded

Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant

1 to Title 28, United States Code Sections 1331, 1332 and 1343.

2 2. The conduct upon which this suit is based occurred in this judicial district.

3
4 **PARTIES**

5 3. Defendant CITY OF DALY CITY is a public entity established by the laws and
6 Constitution of the State of California, and owns, operates, manages, directs, and controls the
7 DALY CITY POLICE DEPARTMENT which employs other defendants in this action.
8 Defendant DALY CITY POLICE DEPARTMENT is, and at all times herein mentioned, a
9 municipality entity duly organized and existing under the laws of the State of California.

10 4. Defendant GARY S. MCLANE is, and was at all times mentioned herein, the Chief of
11 Police of the City of Daly City and in doing the things hereinafter alleged, acted under color of
12 state law as an agent of the City of Daly City and with its full consent and approval.

13 5. Defendant Officer KRANZ is, and was at all times mentioned herein, a police officer of
14 the City of Daly City and in doing the things hereinafter alleged, acted under color of state law as
15 an agent of the City of Daly City and with its full consent and approval.

16 6. Defendant officer ANDRADE is, and was at all times mentioned herein, a police
17 officer of the City of Daly City and in doing the things hereinafter alleged, acted under color of
18 state law as an agent of the City of Daly City and with its full consent and approval.

19 7. Defendant Officer O'ROURKE is, and was at all times mentioned herein, a police
20 officer with the rank of Sergeant of the City of Daly City and in doing the things hereinafter
21 alleged, acted under color of state law as an agent of the City of Daly City and with its full
22 consent and approval.

23 8. Defendant Officer KEYES is, and was at all times mentioned herein, a police officer
24 with the rank of Sergeant of the City of Daly City and in doing the things hereinafter alleged,
25 acted under color of state law as an agent of the City of Daly City and with its full consent and
26 approval.
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1 information about the abuse and mistreatment of animals. Citizens for Cruelty-Free Entertainment
2 videotapes have been used and broadcast by local and national news media, including but not
3 limited to NBC Channel 3 News, KGO TV, CBS Channel 5 News, ABC 7 News and KRON 4
4 News in addition to news organizations in other markets, such as San Diego and Connecticut.
5 Citizens for Cruelty-Free Entertainment videotapes are also used on the internet.

6 14. The Cow Palace in Daly City is publicly-owned property. The parking lots and
7 pedestrian walkways outside the arena are public fora.

8 15. On September 12, 2008 Plaintiff went to the Cow Palace in Daly City to leaflet
9 patrons of the Carson & Barnes Circus and to videotape the animals used by the Circus.

10 16. In advance of going to the Cow Palace, Deniz Bolbol, on behalf of Citizens for
11 Cruelty-Free Entertainment contacted Officer Gomez, the watch commander at the Daly City
12 Police Department to explain that the group was going to the Cow Palace to peacefully leaflet and
13 videotape and wanted to confirm that the Daly City police would uphold her rights. Bolbol
14 explained that she had worked with defendant McLane in the past. Gomez confirmed that the
15 police would uphold the group's rights. He said he would be working that night and would be
16 available if she needed assistance.

17 17. Upon arriving at the Cow Palace Plaintiff, peacefully and without interfering with the
18 circus operation, videotaped the animals. Carson & Barnes Circus representatives approached
19 Plaintiff and tried to interfere with Plaintiff while he was peacefully videotaping.
20 The Daly City Police Department was called and an officer arrived. The officer told Carson &
21 Barnes Circus representatives that they could not interfere with Plaintiff and others who were
22 engaged in peaceful free speech activities. Plaintiff listened to a conversation between Deniz
23 Bolbol and the officer during which they discussed whether the barricade blocking off roughly
24 three-quarters of the parking lot was legal because activists wanted to go into that area to
25 videotape the conditions and treatment of the animals. The officer called his supervisor to the
26 scene; shortly thereafter Officer Griggs arrived. Officer Griggs then had a discussion with
27 members of Carson and Barnes Management including Gustavo Parra-Bello and Plaintiff during
28

1 which officer Griggs informed Carson and Barnes management that the parking lot was public
2 property and the activists were allowed access to the entire lot, except areas that require a ticket
3 and areas surrounded by metal barricades. At the end of this conversation Carson and Barnes
4 employees made changes to some of the metal barricades. Just before leaving the scene Officer
5 Griggs had an additional conversation regarding the barricades with Deniz Bolbol, Diana Colvin
6 of the Cow Palace management, and Gustavo Parra-Bello of Carson and Barnes Management
7 Griggs contacted watch commander Gomez to clarify where activists could go to videotape the
8 conditions and treatment of the animals. After speaking with watch commander Gomez on a cell
9 phone, Griggs informed Deniz Bolbol, Diana Colvin of the Cow Palace management and Gustavo
10 Parra-Bello of Carson and Barnes Management that the barricades were not allowed and that a
11 smaller parameter around the circus tent would need to be erected; Griggs explained that
12 barricades or another barrier could be erected at a reasonable distance from the tent and that
13 barricade would need to circle the tents rather than cut off access to three-quarters of the parking
14 lot. Griggs further explained that Deniz Bolbol and others exercising their First Amendment
15 activities, were allowed to go beyond the barricades to videotape the conditions and treatment of
16 the animals. Cow Palace management representative Diana Colvin and Carson & Barnes
17 management, including Gustavo Parra-Bello, expressed extreme displeasure with Griggs and
18 insisted that activists would sneak into the tents with the animals. Griggs told Cow Palace
19 management representative Diana Colvin to call the police if such activity took place.

20 18. Shortly after the conversation described in paragraph 16 ended, Deniz Bolbol shared
21 the details of the conversation with Plaintiff. For the remainder of the night Plaintiff and others
22 with him went beyond the barricades and videotaped the animals. Carson & Barnes representatives
23 harassed Plaintiff and others as they exercised their First Amendment right to gather information.
24 Plaintiff and the others with him left that night without further incident.

25 19. The parking lots surrounding the Cow Palace are public fora.
26 At all material times Plaintiff was peacefully exercising his constitutionally protected right of free
27 speech by collecting information on matters of public concern in a public forum.
28

1 20. The following day, September 13, 2008, Plaintiff returned to the Cow Palace, along
2 with approximately four others, for the purpose of exercising their constitutionally protected First
3 Amendment right to Free Speech and Press, by holding signs, banners, offering informational
4 leaflets to patrons and by videotaping the handling and conditions of the animals used by the
5 circus. When Plaintiff arrived at the circus the barricades had not been moved to reflect Officer
6 Griggs' request that the barricades should circle the tents rather than cut off access to
7 three-quarters of the parking lot. Based on the information provided the night before by Officer
8 Griggs, Plaintiff and Bolbo, walked past the barricades to videotape the conditions and treatment
9 of the animals with Carson & Barnes Circus. At first Carson & Barnes Circus employees harassed
10 and tried to interfere with Plaintiff's videotaping. Carson & Barnes Circus employee Kristin Byrd
11 Parra instructed employees to get back to work and leave Plaintiff and Bolbol alone.

12 Shortly thereafter without identifying himself and without warning, defendant Kranz rushed
13 Plaintiff, physically attacked him and broke his camera. Plaintiff managed to escape from Kranz.

14 21. At no time, before, during or after the attack, did Kranz command Plaintiff to do
15 anything or tell Plaintiff that he was under arrest.

16 22. Immediately after Kranz attacked plaintiff, Plaintiff heard Gustavo Para-Bello of
17 Carson and Barnes management along with Diana Colvin of Cow Palace management instruct
18 Carson and Barnes employees in the area to assault Plaintiff who were foreseeable encouraged to
19 do so by Kranz's assault of Plaintiff. At this time Plaintiff witnessed Kranz physically attack
20 Deniz Bolbol.

21 23. Plaintiff, fearing for his safety, while being pursued by numerous Carson and Barnes
22 employees ran to an area where others in their group were present. Once he reached that area,
23 three Carson and Barnes employees physically attacked Plaintiff causing further damage to his
24 video camera.

25 24. Plaintiff was later falsely arrested for trespass, resisting arrest and assault with a
26 deadly weapon. Defendants lacked probable cause to believe that Plaintiff had committed any
27

1 offense. The arrest was ordered by Sergeant O'Rourke and carried out by unknown police
2 officers.

3 25. While arresting Plaintiff, officers, including Andrade and Keyes, pursuant to a City
4 policy of discrimination against animal rights activists, refused to arrest the Circus employees and
5 another person, Valerie Laxamana, who participated in the assault on Plaintiff and made a false
6 claim that Plaintiff assaulted her. In the course of that assault, these individuals attempted to take
7 Plaintiff's camera containing video of the events. Unable to gain control of the camera during the
8 assault, Laxamana watched Plaintiff hand the camera tape to another activist who was leaving on a
9 bicycle with the tape. Laxamana and another person then grabbed the activist with the intent to gain
10 possession of the tape. Laxamana admitted to Kranz that she attempted to grab the tape from the
11 activist on the bicycle. Despite this admission, the defendants declined Plaintiff's demand that she
12 be arrested.

13 26. Officers Andrade and Keyes also failed to conduct a reasonable investigation of
14 Plaintiff's assault claim. They along with other unknown officers declined to view a videotape of
15 the assault on Plaintiff despite knowledge that the assault was captured on videotape that was
16 readily available for him to view. His failure to conduct a reasonable investigation was motivated
17 by bias against the Plaintiff based on Plaintiff's political views and perceived association with
18 animal rights activists.

19 27. Defendant McLane told Bolbol that he supported defendant Kranz' unlawful actions
20 and thereby ratified the illegal conduct alleged in this complaint.
21

22 **STATEMENT OF DAMAGES**

23 26. As a direct and proximate result of the incident alleged in this complaint, Plaintiff
24 sustained injuries and damages including, but not limited to: pain, suffering, injuries to his
25 body, as well as severe emotional distress, fear, anxiety, embarrassment and humiliation, all to his
26 general damage in an amount according to proof.
27
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1 28. As a direct and proximate result of the incident alleged in this complaint, Plaintiff
2 suffered property damage and was compelled to pay a bond premium.

3 29. In doing the things alleged herein, defendant Kranz acted willfully and maliciously
4 and in reckless or callous disregard of the plaintiff's rights justifying an award of punitive
5 damages in accordance with proof.

6 30. Plaintiff has been compelled to engage the services of private counsel to vindicate
7 their rights under the law. Plaintiff is therefore entitled to reasonable attorney's fees pursuant to
8 Title 42, United States Code § 1988.

9
10 **COUNT ONE**
11 Violation of Civil Rights
12 (Title 42 U.S.C. Section 1983)

13 31. Plaintiff realleges and incorporates herein by reference the allegations set forth in
14 Paragraphs 1 through 30 of this complaint.

15 32. In doing the acts complained of herein, defendant Kranz acted under color of state law
16 to deprive plaintiff as alleged herein, of certain constitutionally protected rights including, but not
17 limited to:

- 18 (a) the right not to be deprived of liberty without due process of law;
- 19 (b) the right to be free from invasion or interference with plaintiff's zone of privacy;
- 20 (c) the right to be free from unreasonable searches and seizures;
- 21 (d) the right to freedom of speech;
- 22 (e) the right to freedom of association;
- 23 (f) the right to petition for a redress of grievances;
- 24 (g) the right to equal protection of the law;
- 25 (h) the right to be free from police use of excessive force;
- 26 (i) the right to be free from discriminatory law enforcement;
- 27 (j) the right to be free from arrest without probable cause;
- 28 (k) the right to be free from retaliation for the exercise of rights under the First Amendment.

1 33. The arrest of Plaintiff and the use of excessive force constituted part of a pattern and
2 practice of the City of Daly City to use his police powers to crush political expression.

3 34. The failure of the City of Daly City to implement policies to assure the protection of
4 First Amendment rights, to train police officers to respect such rights, its failure to train officers in
5 the use of reasonable force and its policy of discriminatory enforcement of laws caused plaintiff to
6 suffer the injuries described in this complaint.

7 35. Plaintiff has no speedy and adequate remedy at law in that he regularly participates in
8 activities at the Cow Palace and expects to do so in the future. Plaintiff legitimately fears that he
9 will be subjected to arbitrary arrest and the use of excessive force in the future if the court does not
10 issue an injunction to prohibit the defendants' unlawful conduct.

11 36. As a direct and proximate result of the acts complained of herein, plaintiff has suffered
12 general damages as set forth in this complaint.

13 37. The conduct of defendant Kranz was willful, malicious, oppressive, and/or reckless,
14 and was of such a nature that punitive damages should be imposed in an amount commensurate
15 with the wrongful acts alleged herein.

16
17 **COUNT TWO**

18 Violation of Civil Rights
19 (Cal. Civil Code section 52.1)

20 38. Plaintiff realleges and incorporates herein by reference the allegations set forth in
21 Paragraphs 1 through 28 of this complaint.

22 39. In doing the acts complained of herein, defendants interfered by threats and
23 intimidation with the plaintiff's exercise and enjoyment of rights secured by the Constitution of
24 the United States and the laws of the State of California including the rights to free expression, the
25 right to assembly, the right to be free of from unlawful search and seizure and denial of equal
26 protection and discriminatory enforcement of laws.

27 40. As a proximate cause of defendants' actions, plaintiff was injured as set forth in this
28 complaint.

1 41. Prior to filing this complaint, Plaintiff presented a timely claim to the City of Daly City
2 under California Government Code section 910. Denial of the claim was served on Plaintiff on
3 May 8, 2009.

4
5 **COUNT THREE**

6 Violation of Civil Rights
7 (Cal.Civil Code section 51.7)

8 42. Plaintiff realleges and incorporates herein by reference the allegations set forth in
9 Paragraphs 1 through 28 of this complaint.

10 43. In doing the acts complained of herein, defendants used intimidation and violence
11 against the plaintiff on account of his political affiliations and beliefs with respect to the humane
12 treatment of animals.

13 44. As a proximate cause of defendants' actions, Plaintiff was injured as set forth in this
14 complaint.

15
16 **JURY TRIAL DEMAND**

17 45. Plaintiff demands a jury trial.

18 **PRAYER**

19 **WHEREFORE**, Plaintiff prays for judgment against the defendants, and each of them, as
20 follows:

- 21 1. General damages according to proof against all defendants;
- 22 2. Punitive damages against defendants Kranz, McLane, Andrade, O'Rourke and
23 Keyes according to proof;
- 24 3. Preliminary and permanent injunctive relief;
- 25 4. Treble damages for the violations under California Civil Code section 52.1;
- 26 5. A \$25,000 civil penalty for the violations under California Civil Code section 51.7 and
27 52.1;
- 28 6. Attorney's fees pursuant to relevant statutes on each count of this complaint;

1 7. Costs of suit; and

2 8. For such other and further relief as the court deems appropriate.

3 DATED: January 21, 2010

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6 /s/ David J. Beauvais
7 DAVID J. BEAUVAIS
8 Attorney for Plaintiff
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